

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**CAPITAL ONE BANK,
APPELLANT-RESPONDENT
vs.**

**EDISON CREDIT UNION,
RESPONDENT-APPELLANT**

DOCKET NUMBER WD70045 and WD70088

DATE: SEPTEMBER 29, 2009

Appeal from:

Jackson County Circuit Court
The Honorable Richard E. Standridge, Judge

Appellate Judges:

Division Three: Thomas H. Newton, C.J., James E. Welsh and Karen King Mitchell, JJ.

Attorneys:

Ninion S. Riley, for Amicus Curiae

David J. Weimer, for Appellant-Respondent

Alan D. Schwartz, for Respondent-Appellant

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**CAPITAL ONE BANK, Appellant-Respondent, v.
EDISON CREDIT UNION, Respondent-Appellant**

WD70045 & WD70088

Jackson County

Before Division Three Judges: Newton, C.J., Welsh, and Mitchell, JJ.

Capital One Bank appeals asserting that Edison Credit Union lacked standing to claim an exemption on behalf of the judgment debtor in a garnishment action and that Edison was required by law, when served with a garnishment, to seize the funds belonging to the judgment debtor and to pay the funds into court unless the court or the sheriff released the garnishment. Edison cross appeals and asserts that the circuit court erred in denying its motion for attorneys' fees and expenses.

AFFIRMED.

Division Three holds:

(1) The circuit court did not err in entering judgment in favor of Edison on Capital One Bank's Exception to Garnishee's Interrogatory Answers. Pursuant to section 525.080.2, RSMo 2000, Edison had the right to assert that the money sought to be garnished was protected from garnishment because the money was the judgment debtor's unemployment compensation, and Edison was not obligated to pay the funds into the court, absent a court order. As set forth in section 525.080.2, property that is protected from garnishment by state law need not be delivered to the court "to the extent such protection or preemption is applicable."

(2) The circuit court did not err in denying Edison's request for attorneys' fees. Section 525.240 and Rule 90.12(b) award a garnishee the "costs attending such garnishment" only and do not award the garnishee costs when a garnishee abandons its neutrality and goes beyond costs normally attending such garnishment. Where a garnishee asserts that funds held by it on behalf of a judgment debtor are exempt from garnishment, a trial court correctly denies the garnishee an award of attorneys' fees even if the court allows the funds to be exempt. In this case, Edison became the litigant by claiming the exemption of unemployment benefits for the judgment debtor. Its representation and assertion of the exemption on behalf of the judgment debtor went beyond the "costs attending such garnishment."

Opinion by: James E. Welsh, J.

September 29, 2009

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